IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 393 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAIBABEN @ RAJUBEN MADHUBHAI BUDHELA - Appellant(s)
Versus
JITENDRAKUMAR RAMBHAI SOLANKI & 1 - Defendant(s)

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Appearance :
MR DC SEJPAL for Appellant(s) : 1,
NOTICE SERVED BY DS for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 19/03/2007

ORAL JUDGMENT

1. Original claimant has preferred this appeal under sec. 173 of Motor Vehicles Act, 1988 (hereinafter referred to as the “Act”) to challenge

the order passed below application at ex. 5, which was submitted under sec. 140 of the Act for claiming Rs. 25000/- under No Fault Liability. By the said order which dated 9.6.2006 the Claims Tribunal has dismissed the application.

2. In the instant case, the accident occurred on 15.6.2004. The appellant ws travelling by rickshaw bearing registration No. GJ-1-XX-4639 The said rickshaw collided with a truck near village Bhadrod on Mahuva-Bhavnagar road. As a result of the same, the appellant sustained injuries. He, therefore, preferred claim petition under the provisions of the Act bearing Motor Accident Claims Petition No. 509/2004. During the pendency of the said petition, the appellant preferred an application under sec. 140 0f the Act for claiming interim compensation of Rs. 25000/-.

3. After hearing the learned advocates for the parties and upon going through the documents produced by the appellant including the medical certificate, the Claims Tribunal found that the disability certificate produced by the appellant was not reliable, hence, the Claims Tribunal rejected the

application. Hence, this appeal.

4. I have heard Mr. DC Sejpal learned advocate for the appellant. On 1.2.2007 this court issued notice for final disposal making it returnable on 28.2.2007. Direct service of the notice was permitted. The respondents have been served, they have chosen not to appear and contest this appeal.

5. Upon going through the order of the Claims Tribunal, it appears that it has formed an opinion that the appellant has failed to establish that he suffered injury which has resulted into the disability, hence, the Claims Tribunal has dismissed the application. The Claims Tribunal has found that the disability certificate produced at mark 19/2 did not inspire any confidence. This certificate is dated 19.12.2005. It is issued by the Part Time Assistant Professor Dr. Rajendra N. Kabaria of Sir-T. Hospital & Medical College, Bhavnagar The Doctor has given findings after carrying out scientific test, which shows that there is a memory disturbance. The appellant was not able to recognize the smell or taste. The following findings have been recorded.

> "(1)Tinnitus in left ear, (2) Headache, (3) Memory disturbances, and (4) Anosmia (unable to recognize smell/taste)."

6. The Doctor is a Neuro Surgeon. The hospital is a Government hospital. The aforesaid conclusion of the concerned doctor shows that the appellant has suffered loss of certain senses like smell, taste etc. These are in the nature of permanent disability. Whether the certificate is concocted can be considered and in a given case it can be doubted and ultimately discarded also. But in the instant case, it is not necessary, since prima facie it appears to be genuine. The Claims Tribunal was, therefore, not right in observing that the certificate was not reliable. That finding of the Claims Tribunal is erroneous and requires to be quashed and set aside at this stage. The Claims Tribunal has to confine itself only to certain facts which are relevant for grant of application under sec. 140 of the Act, that is; (i) there is vehicular accident; (ii) the appellant has sustained physical injuries and (iii) as a result of these injuries, there is permanent disability. In view of the same, the impugned order is quashed and set aside. The respondents are directed to deposit the sum of Rs. 25000/- before the Claims Tribunal

within 6 weeks from the date of this judgment. The Claims Tribunal is directed to pay 30% of the same to the appellant and rest of the amount be invested by way of Fixed Deposit in any nationalized Bank initially for a period of three years. This appeal is allowed. DS permitted.

(AKSHAY H. MEHTA, J.)

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